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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/709,855

06/02/2004

John L. Andersen

71351-0034

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05/10/2007

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EXAMINER

FIDEI, DAVID

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

05/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/709,855

Applicant(s)

ANDERSEN, JOHN L.

Examiner

David T. Fidei

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3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 12-14, 20 and 21 is/are rejected.
- 7) ☒ Claim(s) 4, 6-11 and 15-19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5, 12-14 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Spivey et al (US Patent no. 6,105,854). A container is disclosed comprising a first end having at least one panel selectively movable to the close the first end defined by any of panels 40, 42, 48, 50 or 56. The second end has a display panel 68, 70 that partially defines an opening in the second end, note figure 4. A closure panel 76 is selectively movable between a closed position where it covers the opening and an open position where the opening is exposed, see col. 5, lines 16-18. Contents of the container can be shipped when the at least one panel and closure panel is in the closed position with the contents removed by moving the closure panel to an open position.

As to claim 2, the container further comprises top, bottom and side panels defined by any of 10, 12, 14, 20 and 22 where the display panel and closure panel extends from different panels.

As to claim 3, the closure panel 76 of Spivey et al is considered secured to panel 10 in the open position by fold line 78.

As to claim 5, the closure panel is considered as covering the display panel by locking tab 96.

As to claim 12, full overlap panels are formed at the first end of the container.

With regard to claim 13, a display panel bottom portion is considered that part of the panels 68, 70 adjacent fold lines 72, 74 with the side portion being that portion adjacent restraining flaps 122, 124.

As to claim 14, a blank is disclosed in figure 1 having the above features.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 20 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A flat preform is recited as formed from the blank wherein the first side panel flap is mounted to the second panel. It is not clear the present disclosure provides such a flat preform as the first side panel flap is mounted to the second panel in an erected state.

Allowable Subject Matter

5. Claims 4, 6-11 and 15-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. Claim 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

7. Applicant's arguments filed March 28, 2007 have been fully considered but they are not persuasive. Nothing is seen as recited in the pending claims 1, 14 or 20 that defines over the carton with dispensing feature of Spivey et al.

Applicant argues with respect to claim 1 that Spivey et al does not disclose a display panel. However, it is not seen where any special meaning is imparted to a panel that is recited as a display panel. It is not believed the "exiting panels" 68, 70 of Spivey et al fail to display anything. By serving to prevent exiting of the beverage cans or bottles from the carton these panels permit display of the beverage cans or bottles in the opening formed by opening of flap 76. Furthermore nothing is defined in the claimed language the prevents these panels 68, 70

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interpreted as such. Nothing structurally or functionally is set forth distinguishing the claimed display panel from the panels 68,70 of Spivey et al. Accordingly, the rejection is maintained in this capacity.

Claim 3 recites wherein the closure panel is secured to one of the top, bottom and side panels in the open position. If panel 76 were unsecured in the open position then it would fall off the carton when moved to the open position. This is clearly not the case as the only issue is how the closure panel is secured in the open position not whether it is secured.

As to claim 5, the vertical height of panel 76 must be at least as great as the diameter of the exiting cans or bottle, col. 5, lines 28-30. Also, flaps 68, 70 have portions 122, 124 that extend downwardly so that an opening exists that is slightly less than the diameter of a can or bottle, col. 5, lines 35-40. Hence the panel 76 covers the display panel and opening in the closed position in as much as is claimed.

As to claim 12, the first end comprises panels that fully overlap to provide a closed end in as much as is claimed and disclosed, see col. 4, lines 37-40. Panels 26, 28, 30 and 32 of figure 6 of the present invention do not individually extend the full width of the blank such as panel 54. Accordingly, it is not seen where there is any distinction.

With respect to claim 13, a display panel bottom portion is considered that part of the panels 68, 70 adjacent fold lines 72, 74 with the side portion being that portion adjacent restraining flaps 122, 124.

With respect to claim 14, it is acknowledged four panels, not five, are set forth. It is also noted the term comprising is used to set forth the panels which is open ended. Spivey et al includes 4 panels with one panel having a closure panel 76 extending therefrom and the second end of the four panels other than the one having the closure panel extending therefrom has a display panel defined by either of flaps 68, 70 extending therefrom.

As to new claim 21, the equivalent closure panel 76 of Spivey et al is movable between a closed position where it covers the opening and display panel as discussed with reference to claim 5 above. It is also not seen where Spivey et al is not a shipping container as argued by Applicant. Nothing in Spivey et al describes the carton as flimsy and even if such is the case cartons of the type described by Spivey et al are used in shipping cans or bottles to a retail outlet medium. Hence, there is no distinction in this capacity.

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Conclusion

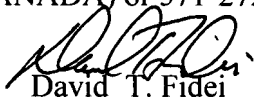
8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. The examiner can normally be reached on Monday - Thursday 6:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


David T. Fidei
Primary Examiner
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Dtf

May 3, 2007